

**COMMITTEE ON LIMITED JURISDICTION COURTS
MINUTES**

Wednesday, October 1, 2008
10:00 am to 2:30 pm
State Courts Building
Conference Room 119 A/B
1501 W. Washington Street
Phoenix, AZ 85007

MEMBERS PRESENT:

Honorable R. Michael Traynor
Honorable Ted W. Armbruster
Honorable Phillip W. Bain
Mr. Daniel Carrion
Honorable Thomas L. Chotena
Ms. Faye Coakley
Honorable Timothy Dickerson
Ms. Joy Dillehay
Honorable Sam Goodman

Honorable Jeffrey A. Klotz
Honorable Nicole Laurin
Honorable Dorothy Little
Honorable Kathy McCoy
Mr. James R. Scorza
Mr. Mark Stodola
Honorable J. Matias Tafoya
Ms. Marla Randall

MEMBERS ABSENT:

Ms. Lisa Royal

PRESENTERS/GUESTS:

Justice Scott Bales
Ms. Joan Harphant
Paul Julien, Esq.
Susan Pickard
Mark McDermott
J.L. Doyle
Stewart Bruner

James Westmiller
Sharleen Decker
Nancy Swetnam
Amy Love
Patience Huntwork, Esq.
Kathy Waters

STAFF:

Mr. Mark Meltzer

Ms. Lorraine Nevarez

I. REGULAR BUSINESS

A. Welcome and Opening Remarks

With a quorum present, the October 1, 2008 meeting of the Committee on Limited Jurisdiction Courts (LJC) was called to order by Judge Antonio Riojas, Chair, at 10:00 am. Judge Riojas welcomed all the members, and thanked Judge Traynor for his years of service as chair of the Committee.

B. Approval of May 21, 2008 Minutes

The minutes for the May 21, 2008 meeting of the LJC were presented for approval.

MOTION: To approve the minutes from the May 21, 2008 meeting a presented. Seconded. Passed unanimously. LJC-08-013

II. BUSINESS ITEMS/POTENTIAL ACTION ITEMS

A. Appeals Guides for Self Represented Litigants

Justice Scott Bales, AOC, and Paul Julien, AOC presented new appeal guides for self-represented litigants that are now available on the Arizona Judicial Branch website, at <http://www.supreme.state.az.us/appellateguide.htm>. This has been an 18 month effort to assist self-represented litigants in the appeals process. The guides cover five separate areas in appeals including civil, criminal and traffic cases.

B. Judicial Vacancies Website

Ms. Susan Pickard, AOC, and James Westmiller, AOC, presented the new website for Limited Jurisdiction and General Jurisdiction vacancies. The website provides links to various open vacancies within the state for Judges, Commissioners and Pro tems. The website provides an effective and standard location for judicial opportunities to be viewed.

C. Creation of Two New Justice Court Precincts

Mr. Mark McDermott, AOC, presented on the two new justice court precincts in Maricopa County. The AOC notifies the County Board of Supervisors when a county has reached its peak to create new courts/precincts.

D. Statewide Photo Radar

Ms. Sharleen Decker updated the Committee on HB 2210, which passed during the Second Regular Session of the 48th Legislature (2008). HB 2210 enacted a program of statewide photo enforcement of Title 28 violations. The details of this program, which went into effect on September 26, 2008, are as follows:

- New legislation covered by Article 3 and 6
- New legislation there is no abstracts of record of responsibility to MVD
- Notice of Violation (NOV) fee \$181.50

Committee Comments/Concerns

What happens at the court level? Is there a timeframe for violators to respond?

Response: Rule 45-Complaint: Service, Appearance Date, Notice, Response-Affects the complaint at the court level. We are working with all courts on calendaring this after 30 days. Courts will assess cost of service.

Regarding the AG's advice—why isn't the new legislation eligible for DDS?

Response: It's not part of the new legislation. There will be another assessment and possible emergency session to discuss clarifying the legislation. Ms. Decker encouraged members to send their input to assist with the challenges of the new legislation.

Ms. Decker indicated a memo would be going out from Janet Scheiderer, Director of Court Services, AOC, which would address the local fees.

E. Legislative Package

Ms. Amy Love, AOC, apprised members of proposed legislation that could impact limited jurisdiction courts. The following items were highlighted:

2009-01 Domestic violence; designation

Replaces all statutory references to "Domestic Violence" in Arizona Revised Statutes (of which there are approximately 233) with the designation "Domestic Victim."

The Committee did not support this proposal.

2009-02. Decriminalization of petty offenses

Decriminalizes petty offenses, treating the offenses similar to that of civil traffic.

Currently, a petty offense is an unclassified criminal offense. A.R.S. § 13-601.

Persons may be arrested on petty offenses and incarcerated for failure to appear or on violating a court order to pay a fine. The maximum penalty is a \$300 fine.

Incarceration and probation are not options.

The majority of the Committee recommends taking no position.

2009-03: Restitution; orders

Juvenile restitution orders:

Requires the juvenile court to enter a juvenile restitution order in favor of each person entitled to restitution at the time it announces an order of restitution, whether at the disposition hearing or any subsequent restitution hearing. Current law requires this order to be entered after the juvenile turns 18 if there is an unpaid balance on restitution owed to a victim. Restitution would accrue interest at the statutory rate (10%) from the date of entry of the order. The court-signed restitution order is immediately recordable as a lien against the assets of the juvenile or the juvenile's parents to the maximum amount allowed by law. If a victim with a court-signed

restitution order employs and attorney or collection agency to recover restitution, the victim is entitled to collect a reasonable fee for the attorney or collection services. Current law specifies that the court may require the custodial parent of a juvenile to make restitution; the proposal removes the word “custodial” so that any parent of the juvenile could be required to make restitution.

The Committee did not support this portion of the proposal.

Adult restitution orders:

Requires the trial court to retain jurisdiction in any case where restitution is ordered for the purpose of modifying the manner in which restitution is paid to determine whether a defendant is in compliance with probation terms and conditions or the defendant’s sentence until all restitution is paid. The court must issue a signed order in the amount of restitution awarded upon entry of any amount of restitution due a victim at sentencing or any subsequent restitution hearing. Restitution accrues interest at the statutory rate from the date the order was made and the court-signed restitution order is immediately recorderable as a lien against the assets of the defendant. If a victim with a court-signed restitution order employs and attorney or collection agency to recover restitution, the victim is entitled to collect a reasonable fee for the attorney or collection services.

The Committee did not support this portion of the proposal.

F. Rules Change Update

Ms. Patience Huntwork, AOC, presented on the new and newly amended Arizona Rules of Court. Ms. Huntwork also requested volunteers from the Committee to join a workgroup concerning R-06-0016. This rule petition is seeking to amend Rule 1.6, Ariz. R. Crim. P., which would provide for appearances by defendants via videoconferencing for initial appearances, arraignments, and some other hearings. Committee members Judge Riojas, Judge Goodman, and Judge Dickerson volunteered. Pending Rule change petitions can be viewed and comments can be submitted at the following website:

<http://azdnn.dnnmax.com/AZSupremeCourtMain/AZCourtRulesMain/CourtRulesForumMain/tabid/89/Default.aspx>

G. Task Force on the Code of Judicial Conduct

Paul Julien, AOC, discussed the proposed new code of judicial conduct. This new code adopts the structure of the 2007 ABA Model Code of Judicial Code. Mr. Julien also invited the Committee to a public hearing to be held regarding the new code in Phoenix or Tucson.

H. Subcommittee Updates

Electronic Documents

Mr. Karl Heckart, AOC ITD Director, and Steward Bruner, COT Staff, discussed the needs to reduce physical storage space; courts are requesting formal guidance regarding their ability to eliminate paper records prior to conclusion of the required retention period, when equivalent electronic records exist. Language in court rules was recently revised to allow clerks to substitute electronic records for paper, "Provided adequate safeguards are employed for the preservation and integrity of such documents..." Technical requirements associated with Rule 124, provided in ACJA §§1-504 and 1-506, were considered barriers to progress. e-Records subcommittees of both the Limited Jurisdiction Courts Committee (LJCC) and Commission on Technology's Technical Advisory Council (TAC) have defined various minimum requirements in the context of providing those adequate safeguards. Their work has been codified in a proposed code section applicable to all levels of courts, with reduced requirements for closed records in limited jurisdiction courts. Specific requirements are based on the value of each case-related record rather than the length of time it is required to be retained. Commission on Technology has recommended the section for inclusion in the Arizona Code of Judicial Administration. In preparation for presentation to the Arizona Judicial Council (AJC), affected committees are being requested to review the draft document and consider its potential impact.

Committee Comments:

How much would it cost to setup a safeguard system?

Response: The cost to setup a safeguard system varies.

MOTION: Recommend that AJC approve the proposed code section regarding protection of electronic records treated as original case file records, with any changes noted or issues addressed, as documented by staff. Seconded. Passed unanimously. LJC-08-014

Defensive Driving

Ms. Joan Harphant, Tucson City Court Administrator, and Nancy Swetham, Certification & Licensing Division Director, AOC, reported on significant legislation affecting the Defensive Driving Program and the use of the defensive driving schools by the courts, which was enacted by the Arizona State Legislature in 2007 and 2008. The LJC Defensive Driving Subcommittee held a number of meetings with judicial officers, court administrators, AOC staff, technical staff, and defensive driving school owners/operators to discuss this legislation. Joan Harphant provided an update on the efforts of the subcommittee to identify critical issues, reach consensus and implement the legislation.

Implementation requires amendments to the Arizona Code of Judicial Administration § 7-205: Defensive Driving. Many of the proposed changes represent the consensus reached among the stakeholders at the subcommittee meetings. In addition there are proposed changes that are not linked to new laws. The Arizona Judicial Council will consider these proposed changes to § 7-205 at its October 22, 2008 meeting and will make a recommendation to the Supreme Court on adoption.

Committee Comments/Recommended Modifications::

- Driving Schools should include with the check the attendee's names, citation number, violation, date of completion
- Fees should be transmitted at least every two weeks if not weekly.

MOTION: To recommend the Arizona Judicial Council support the proposed Amendments to section 7-205, subject to the recommended changes. Seconded and Passed unanimously. LJC-08-015

Adult Probation

JL Doyle presented on ACJA code section 6-105.01: Powers and Duties of Officers; 6-201.01: Standard Probation; and 6-202.01: Adult Intensive Probation.

The adoption of these new code sections is a result of the initiative to roll out Evidence-Based Practices to probation in the State of Arizona. Highlights include:

1. Departments will be governed by the existing Powers and Duties code until they have achieved the minimum requirements, which will be outlined in an Administrative Order and/or Administrative Directive, and approved by the Administrative Director.
2. All departments must achieve the minimum requirements and apply for governance under 6-105.01 by December 31, 2010.

MOTION: To recommend approval of sections 6-105.01, 6-201.01, and 6-202.01 as written. Seconded. Passed unanimously. LJC-08-016.

III. OTHER BUSINESS

Rules and Forms: Amendment to the ACJA-Retention Schedule for OUI

Honorable Matt, Tafoya presented on ACJA § 4-302: Limited Jurisdiction Courts and Records Retention and Disposition. HB2643; liquor; restaurant licenses; continued operation; enacted during the 2008 legislative session, increased the look-back period, from 60 to 84 months, for determining a second time or aggravated Operating Under the Influence (OUI) offense. The bill will become effective January 1, 2009.

Currently, the Limited Jurisdiction Court Records Retention and Disposition Schedule do not cover OUI case records. To correct this oversight, and to improve the completeness of the LJC Records Retention and Disposition Schedule, it is recommended that the schedule be modified to include OUI case records, applying the same retention period as DUI case records, being 7 years after final adjudication and completion of sentence.

MOTION: To recommend that AJC approve and adopt the amendment to ACJA § 4-302: Limited Records Retention & Disposition, to require OUI case records be retained for 7 years, effective Jan. 1, 2009. Seconded. Passed unanimously. LJC-08-17

Implementation: Research and Clerk Fees

Jim Scorza and Joan Harphant updated the Committee on its project concerning research fees and clerk fees in the various courts. They discussed instances which may require an imposition of a research fee. The goal was to establish uniformity among the courts. The Committee recommended the workgroup discuss further situations where a fee would be imposed.

Schedule of 2009 Committee Meetings

The committee approved the following meeting dates:

Wednesday, February 18, 2009
Wednesday, May 20, 2009
Wednesday, September 16, 2009
Wednesday, October 28, 2009

The meeting times are 10:00 a.m. to 2:30 p.m. The February, September, and October meetings would be held in Conference Room 119. The May meeting would be in conference room 345.

The Chair announced that if there are no requested agenda items for the scheduled October 29, 2008, Committee meeting prior to October 10, 2008, that a notice will be sent out cancelling the October 29, 2008, meeting.

Call to the Public

No public response.

Adjourn

The meeting was adjourned at 2:15 p.m.